Editor's note: Appealed -- aff'd, Civ. No. 77-1247 (W.D. Okl. Nov. 26, 1979); aff'd, No. 80-1117 (10th Cir. April 19, 1982); 675 F.2d 1122

KIRKPATRICK OIL COMPANY

IBLA 77-74 Decided October 11, 1977

Appeal from decision of New Mexico State Office holding oil and gas leases NM 0141125-A and NM 0558693-C to have expired at the end of their respective terms.

Affirmed.

1. Oil and Gas Leases: Communitization Agreements

> In the absence of an approved communitization agreement involving a federal oil and gas lease, production from fee land within a state spacing unit cannot be attributed pro rata to federal leases within the spacing unit, and where there is no drilling operation, producing well or well capable of production on such lease, such lease expires at the end of its primary term.

APPEARANCES: C. Harold Thweatt, Esq., Crowe, Dunlevy, Thweatt, Swinford, Johnson and Burdick, Oklahoma City, Oklahoma, for appellant.

OPINION BY ADMINISTRATIVE JUDGE LEWIS

Kirkpatrick Oil and Gas Company has appealed from a decision of the New Mexico State Office, Bureau of Land Management, dated November 26, 1976, which determined that noncompetitive oil and gas leases NM 0141125-A (Okla.) and NM 0558693-C (Okla.), had expired at the end of their primary terms, on June 30, 1971, and on December 31, 1975, respectively.

The subject leases were made subject to Communitization Agreement MC 359, effective July 1, 1970. The agreement, covering all section 34, T. 23 N., R. 14 W., I.M., Woods County, Oklahoma, as to natural gas and associated hydrocarbons from the Hunton Lime, was to remain in force and effect for a period of 1 year and so long

thereafter as gas and oil were, or could be, produced in paying quantities. It had been reported that a producing well had been completed in the Hunton Lime on privately owned fee land in section 34, and under the well-spacing program established by the Oklahoma Corporation Commission for the East Togo field in which the lands are situated, the federal leases cannot be independently developed.

It appears that the Geological Survey has received, and accepted, royalty payments from the lessee, as operator under Com. Agr. MC 359, on the assumption that the payments related to Hunton Lime production under the Communitization Agreement. By letter, dated August 9, 1976, Kirkpatrick advised Survey that the well under Com. Agr. MC 359 had failed to produce from the Hunton Lime, so the well had been plugged back and completed as a producer from the Mississippi formation. Belatedly, Kirkpatrick requested approval of an amendment to Com. Agr. MC 359 to include the Mississippi formation. Survey denied this application, stating that although the Hunton well was plugged off and production had been obtained from the recompleted well in the Mississippi on June 20, 1971, such production could not be considered as production under Com. Agr. MC 359, and the Communitization Agreement had expired by its own terms June 30, 1971, and that no amendment can now be approved. Kirkpatrick did not appeal from this decision, as provided by 30 CFR 290.3, to the Director, Geological Survey.

Thereafter, BLM issued its determination that the subject leases had terminated at the end of their respective primary terms because neither lease was perpetuated by a well capable of producing oil or gas in paying quantities.

On appeal appellant argues that its operations on these two leases were consonant with applicable orders of the Oklahoma Corporation Commission, that there has been, and is now, production of oil and gas within section 34 which would extend the subject leases, and that BLM did not follow 30 U.S.C. § 187.

In pertinent part, 30 U.S.C. § 187 (1970), provides that operations on federal oil and gas leases shall not conflict with state laws. Presumably appellant, in its argument, is referring to Oklahoma Corporation Commission Order No. 81433 of September 1, 1970, as the basis for its contention that its operations on these leases have been pursuant to Orders of the OCC. Under Order No. 81433 the OCC ordered that the oil and gas leasehold interest and the mineral interest in the Basal Cherokee (Red Fork), Hunton Lime, Red Fork (Cherokee), Tonkawa Sand, Cottage Grove Sand, Oswego Lime, Chester Lime, and Mississippi Lime underlying all section 34, T. 23 N., R. 14 W., I.M., are common sources of supply and are pooled with Kirkpatrick Oil and Gas Company, authorized to drill and operate the well on the said unit (Section 34).

[1] The relationship between spacing units established by the Oklahoma Corporation Commission and communitization agreements involving federal oil and gas leases was discussed at length in Kirkpatrick Oil and Gas Co., 15 IBLA 216 (1974). This case held that while the action of a state, under its police powers, in establishing spacing units for oil and gas wells is a factor to be considered in determining the acceptability of a communitization agreement, the Department of the Interior reserves the final authority on approving communitization agreements affecting federal leases of oil and gas deposits. Thus, in the absence of an approved communitization agreement involving a federal oil and gas lease, production from fee land within a state spacing unit cannot be attributed pro rata to federal leases within the spacing unit. Cf. Kirkpatrick, supra.

In the absence of any producing or producible well on either lease, BLM correctly held that each of the subject leases expired at the end of its primary term.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed.

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Anne Poindexter Lewis
Administrative Judge

I concur:

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Douglas E. Henriques
Administrative Judge

ADMINISTRATIVE JUDGE GOSS CONCURRING:

The result herein is required under 30 U.S.C. § 226(j) (1970) and Duncan Miller, 25 IBLA 125 (1976). As to the Geological Survey Memorandum of October 18, 1976, however, it would appear that the obligation of appellant to prevent drainage should be reviewed to determine whether or not the contemplated refunds are appropriate.

Joseph W. Goss
Administrative Judge